IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.4 OF 1990

Yogesh J. Patel, of Surat,
Indian Inhabitant, residing at
8, Sadhana Society, Varachha
Road, Surat, 395 006 .. Petitioner.

V/s.

Arvind G. Patel, of Bombay,
Indian Inhabitant, having its
place of business at C/o. M/s.
Arvind & Co., Chartered
Accountants, 2, Union Co-op.
Insurance Building, 1st Floor,
Fort, Bombay - 400 001 .. Respondent.

Dr.Virendra Tulzapurkar, Senior counsel with Ms.S. Srikrishna i/b. Kanga & Co. for the petitioner.
Mr.S.S. Pakale for the Union of India.
Respondent absent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 6TH AUGUST, 2004.

P.C. :
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. This is a reference under sub-section (5) of Section 21 of the Chartered Accountants Act, 1949 (for short ‘the Act of 1949’).

2. For the period from January 21, 1976 to December 31, 1977 one Mr.Yogesh J. Patel (for short ‘the complainant’) was in training as a articled clerk with Shri Arvind I. Patel, member of the Institute of Chartered Accountants of India

(hereinafter referred to as 'the respondent'). The complainant filed a complaint against the respondent before the Institute of Chartered Accountants of India alleging that during the entire period of training from January 21, 1976 to December 31, 1977 the respondent did not pay any stipend to him and thereby contravened the Regulation 32B of the Chartered Accountants Regulation, 1964 and was guilty of professional misconduct.

3. The respondent resisted the compliant and set up the defence that the complainant has taken a loan of Rs.2,500/- from the respondent on July 20. 1976 and further loan of Rs.600/- in July 1976. The total stipend due to the complainant was about Rs.2,400/- and that he adjusted the loan of Rs.2,500/- against the stipend due to the complainant and balance loan of Rs.600/- was outstanding even now.

4. Before the Disciplinary Authority, no documentary evidence was produced by the respondent evidencing the loan of Rs.2,500/- and Rs.600/- as was sought to be set up by the respondent. The respondent has not from his account books shown the payment of loan. The only evidence produced by the

respondent in support of his defence was in the form of Saving Account Passbook of Bank of Baroda, Sir P.M. Road Branch, Mumbai in respect of account of Mr.A.I. Patel, HUF. From the said passbook the respondent sought to suggest that a sum of Rs.3,000/- was withdrawn in cash by self cheque on July 20, 1976 and the said withdrawal was for giving loan of Rs.2,500/- to the complainant on July 20, 1976 and Rs.600/- on July 30, 1976.

5. Looking to the available evidence, the Disciplinary Authority found that the evidence of the complainant was not at all rebutted by the evidence of the respondent and that the theory of loan set up by the respondent was not acceptable being not established by documentary evidence. The Disciplinary Authority considered the matter thus :

> "29. The Committee has given careful consideration to the evidence produced by the complainant and the Respondent, the evidence tendered by the witnesses who were working as articled clerks with the Respondent and the submissions made by the complainant and Counsel for the Respondent. The main charge in this case was that the Respondent did not pay stipend due to the complainant. The main defence of the Respondent was that he had given loan of Rs.2500/- to the complainant on 20-7-1976 out of his H.U.F. Funds against Promissory Note and that the said loan was adjusted against the stipend of Rs.2400/- due to the complainant during

the period of his articled. It was therefore, submitted by the Respondent that there was no breach of Regulation 32B.

29.1 The Respondent has not produced any documentary or other evidence in support of his submission that the above loan of Rs.2500/- was given. The only evidence on which he relied was an entry for withdrawal of cash of Rs.3000/- from the Bank Account of the H.U.F. on 20-7-1976. He produced the Bank Pass Book of the Bank and a certificate of the Bank (Refer Para 19 above) to support this entry. These records only established that a sum of Rs.3000/- was withdrawn by the Respondent from the Bank on that date. He did not produce any books of accounts of the H.U.F. as, according to him, no such books were maintained by the H.U.F. He has admitted that there were several deposits and withdrawals in the Bank Account and that it was difficult to correlate the withdrawal of Rs.3000/- with the loan. He did not produce any counter parts of cheque books or pay-in-slips of the Bank. He did not produce the Pro-note as, according to him, the original was returned to the complainant on 9-1-78. He did not produce even a copy of this Pro-note. There is no mention about adjustment of this loan in the letter dated 7-1-78 (Refer para 11.10 above) obtained from the complainant. Even in his written statement dated 14-6-1979 the Respondent has not referred to this loan or any adjustment of this loan. There is no entry about this adjustment in the accounts of his professional practice. (Refer to para 20 above). The Respondent has admitted that he has not claimed deduction for this stipend amount in his Income-tax assessments. (refer para 17.14 above).

29.2 It is difficult to believe that the Respondent could have given Rs.2500/- in cash to the complainant on 20-7-1976 when he had come to know him only when he signed articled with him on 21-6-1976. In his deposition before the Committee the

Respondent has stated that loan of Rs.2500/- was given on 20-7-1976. In his deposition before the Committee the Respondent has stated that loan of Rs.2500/- was given on 20-7-76 out of his H.U.F. funds. The Respondent has further stated that when he came to know that the complainant had spent this money and wanted further amount he gave him Rs.600/- on 30-7-1976 from his H.U.F. funds. The Respondent has also stated that no receipt for payment of this loan of Rs.600/- was taken from the complainant. It is significant to note that in para 3 of his written statement dated 14-6-1976 the Respondent has stated that "not knowing him fully well, I gave Rs.600/- to him as loan in July, 1976". (Refer para 21 above). It is difficult to believe that if the Respondent was not knowing the complainant fully well on 30-7-1976 when he gave Rs.600/-, he could have given Rs.2500/- on 20-7-1976 without obtaining a guarantee of any known person and without there being a witness in whose presence the amount was actually handed over to the complainant in cash. It is also difficult to believe that the Respondent could have given further loan of Rs.600/- without obtaining a receipt within a period of 10 days when he came to know that the complainant had "spent" the earlier loan of Rs.2500/- within that period.

29.3 The Respondent has stated that he gave the above loan when the complainant told him that his relations with his father were strained. It is significant to note that even according to the admission of the Respondent (Refer para 22.6 above) payments of Rs.400/- on 29.7.76 and Rs.400/- on 2-8-76 were made by Wood Arts (India) to the complainant under his advice and with his knowledge. The Respondent has not explained as to whether he made any enquiries about the strained relationship of the complainant with his father or about the nature of the financial requirements of the complainant at that time. If the submissions of the Respondent are accepted it will mean that the complainant was paid Rs.3100/-

(Rs.2500 + 600) by the H.U.F. of the Respondent and Rs.800 9400 + 400) by Wood Arts (India) during the period from 20-7-76) to 2-8-76 (i.e. Rs.3900/- within a period of 13 days). Again, the Respondent has stated that he gave further loan of rs.600/- after he came to know that the complainant had spent of Rs.2500/- given to him on 20-7-1976. If the complainant had really spent all this amount, it is difficult to understand how he maintained himself for the balance period of his articles from August 1976 onwards. Even according to the deposition of the Respondent he had not paid any amount to the complainant after July 1976 and the only other amount alleged to have been paid to the complainant by M/s. Hima Trading Company was Rs.1800 which was paid between the months of November 1976 and March 1977 (Para 22.2).

29.4 According to the Respondent he had cash balance of about Rs.6500/- his professional books but he had not given the above loan payment from this amount as he did not want to connect this loan for professional practice (Refer para 27.9 above). It is significant to note that in respect of certain other transactions between the Respondent and his H.U.F. entries are made in the account books of his professional practice (Refer para 23.7 above). The Respondent has not explained why this loan, when given in July, 1976, was not entered in his professional books by giving a corresponding credit to his H.U.F. Account. He has not given any explanation as to how his case before the Disciplinary Committee would be prejudiced if he had made entries for adjustment of the above loan against stipend due to the complainant.

5. The consideration of the matter by the Disciplinary Authority appears to us to be proper. The Council accepted the finding of the Disciplinary

Authority that the respondent was guilty of professional misconduct having not paid stipend to the complainant and thereby contravened the provisions of Regulation 32B. The Council, accordingly, has recommended to this Court that the name of the respondent from the register of the members be removed for a period of one month.

6. Though we confirm the finding that the respondent was guilty of professional misconduct, having taken into consideration all the aspects, we are of the view that the punishment of removal of the respondents name from the register of the members for a period of one month is disproportionate to the charge proved. As a matter of fact, we have found that in the matters like this, the Council ordinarily opines for reprimanding the member. The facts of the present case do not justify any deviation.

7. We, accordingly, pass the following order:

i) The finding of the Council that the respondent is guilty of professional misconduct is upheld.

ii) The recommendation of the council for removal of the name of the respondent from the register of the members for a

period of one month is modified and instead we pass the order reprimanding the respondent.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)